

D.P.U. 94-8C-A, D.P.U. 95-8C-1, D.P.U. 96-8C-1

Application of Western Massachusetts Electric Company under the provisions of G.L. c. 164, § 94G for approval by the Department of Public Utilities of the actual unit by unit and system performance of the Company with respect to each target set forth in the Company's approved performance programs for the performance periods between June 1, 1993 and May 31, 1996.

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- and -

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FOR: WESTERN MASSACHUSETTS ELECTRIC
COMPANY
Petitioner

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Intervenor

INTERIM ORDER ON OFFER OF SETTLEMENT

On February 27, 1996, Western Massachusetts Electric Company ("WMECo" or "Company") and the Attorney General of the Commonwealth ("Attorney General") filed for approval with the Department of Public Utilities ("Department") a Joint Motion for Approval of Settlement ("Motion") and an Offer of Settlement ("Settlement"). The Settlement concerned the Company's generation unit performance reviews for the years 1994, 1995, and a portion of 1996, docketed as D.P.U. 94-8C-A, D.P.U. 95-8C-1, and D.P.U. 96-8C-1.

The Company and the Attorney General indicated that in order to terminate the 1995 proceeding and a portion of the 1996 proceeding, public notice and hearing may be required. The Company and the Attorney General requested that the Department issue an order approving the Settlement effective as of March 1, 1996, subject to refund if, after a hearing, the Settlement is not approved.

In addition to the Department, the Settlement was served on all parties to WMECo's last base rate proceeding, D.P.U. 91-290 (1992) and WMECo's last Conservation Charge proceeding, D.P.U. 96-8-CC (1996).

The Settlement proposes to resolve performance review issues relating to three performance periods, from June 1, 1993 to May 31, 1994; from June 1, 1994 to May 31, 1995; and from June 1, 1995 to May 31, 1996.¹ On August 12, 1994, WMECo filed with the Department its annual performance program results for the twelve month period ending May 31, 1994. A public hearing was held on September 22, 1994. The Department and the Attorney General conducted extensive discovery. On August 18, 1995, WMECo filed with the Department

¹ The Settlement of the 1996 performance program results is limited to the refueling outage RFO-12 at Millstone 2.

its annual performance program results for the twelve month period ending May 31, 1995. No notice has been issued nor has a public hearing been held. Some discovery has been conducted. The Company has not filed its annual performance program results for the twelve month period ending May 31, 1996, which is due in August, 1996.

The Company and the Attorney General cited two reasons for requesting that the Settlement terms become effective March 1, 1996. First, the parties stated that the previous WMECo rate settlement, D.P.U. 88-8C et al., terminated on February 1, 1996. The previous settlement, which the Department approved on May 26, 1994, reduced WMECo's base rates on an equal percentage basis for all customers by \$8,000,000 per year, effective for 20 months. Western Massachusetts Electric Company, D.P.U. 88-8C et al., at 6 (1994). Because the rate reduction terminated on February 1, 1996, the Company contends that there is a pressing need for new rate levels to be put into place. Second, the Company stated that March 1, 1996, is also the date on which WMECo's rates change for other reasons unrelated to this proposal.

The Department notes that WMECo's and the Attorney General's request to approve the Settlement, subject to refund, is a unique request. First, the parties are requesting that the Department give effect to a Settlement of proceedings which are not yet filed or not yet noticed. Due process requires notice and an opportunity to be heard before final approval can be granted. G.L. c. 30A, §10. The parties recognize this requirement and have included a request that the Department accept the Settlement subject to refund.

Second, the parties' request that the Department make the terms of the Settlement effective on a provisional basis is also unique in that this request differs from traditional requests

for interim rate relief or interim fuel charge relief.² Requests for interim rate relief generally assume a rate increase, and therefore are subject to a strict standard of review.³ In the instant case, rates would increase absent the grant of the parties' request to effectuate the terms of the Settlement. The parties in effect request approval of a base rate decrease from the rates currently authorized by the Department. Western Massachusetts Electric Company, D.P.U. 91-290 (1992). Therefore, the Department declines to apply the standard of review for interim rate relief to the instant request.⁴

The Department's role in supervising electric companies to ensure protection of the public interest is well-grounded. See G.L. c. 164, § 76. The Department has broad authority to set rates in pursuit of this end. See G.L. c. 164, § 94; Massachusetts Oilheat Council v. Department of Public Utilities, 418 Mass. 798 (1994) (citing Attorney General v. Department of Public Utilities, 392 Mass. 262 (1984)). Even though unusual and perhaps unprecedented, the proposal to allow the Settlement terms to take effect pending a final Order on the Settlement lies within the scope of the Department's authority to approve informal dispositions of controversies. G.L. c. 30 A, § 10.

² See G.L. c. 164, § 94G.

³ "The granting of an interim increase necessarily means that the Department must act without a full hearing and without subjecting the proposed rate filing to close scrutiny. Therefore, the Department limits interim relief to situations in which a genuine financial emergency exists and when interim relief is necessary to avoid probable, immediate and irreparable harm either to a company or to the interests of its customers." CBS Water Company, D.P.U. 91-101, at 2-3 (1991).

⁴ The Department notes that the parties' request will be subject to notice and an opportunity to be heard, and is subject to refund, and therefore the reasoning cited in CBS Water Company, D.P.U. 91-101 (1991) to apply a stricter standard of review to WMECo's request is less compelling.

The Department notes that the purpose of allowing the terms of the Settlement to become effective as of March 1, 1996 would be to avoid a rate increase. This purpose appears reasonable and consistent with the public interest.

For the foregoing reasons, the Department hereby grants the request of WMECo and the Attorney General to make effective the terms of the Settlement filed with the Department on February 27, 1996. The Department emphasizes that its acceptance of the parties' request does not constitute a determination as to the merits of the Settlement, and the Department will make a final determination on the Joint Motion for Approval of Settlement and Offer of Settlement at a future date.⁵ In the event that the Department does not approve the Settlement, the Department will determine whether or not any refund is due.

⁵ The Department notes that another unique aspect of this Settlement is the proposal to transfer the recovery of certain lost base revenues from the Conservation Charge rates to base rates. The Department will investigate this and other issues during its investigation of the merits of the Settlement terms.

ORDER

After due consideration, it is

ORDERED: That the request of Western Massachusetts Electric Company and the Attorney General of the Commonwealth to put into effect the terms of the Offer of Settlement filed February 27, 1996 is hereby granted; and it is

FURTHER ORDERED: That the Department will make a final determination on the Joint Motion For Approval of Settlement and Offer of Settlement at a future date.

By Order of the Department,

John B. Howe, Chairman

Mary Clark Webster, Commissioner

Janet Gail Besser, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).